

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America,) CR. NO. 3:09-1377 (CMC)
)
 v.) **OPINION and ORDER**
)
Karlos D. Sears,)
)
 Defendant.)
)
_____)

This matter is before the court on Defendant's Motion to Modify Term of Imprisonment Pursuant to 18 U.S.C. § 3582(c)(1)(B). ECF No. 82. The Government does not oppose Defendant's motion.

On September 5, 2012, this court notified Defendant that the motion would be construed as a motion for relief under 28 U.S.C. § 2255, and that he should notify the court by September 21, 2012, whether he wished to amend the motion to include other grounds for relief. On October 1, 2012, after receiving an extension of time, Defendant notified the court that he wished to proceed on the motion for relief under 28 U.S.C. § 2255 and did not wish to amend his motion to include additional grounds for relief. ECF No. 89. On October 22, 2012, the Government filed a response indicating that it does not oppose Defendant's motion.

Accordingly, the court construes the motion for relief filed August 21, 2012, as a motion for relief under 28 U.S.C. § 2255, and **grants** the motion. The Judgment Order in CR 3:09-1377 filed November 22, 2010, is hereby **vacated**, and this matter is set for resentencing on **Wednesday, December 5, 2012, at 2:00 p.m.** Defendant has consented to waive his presence but shall be present via telephone from FCI – Oakdale.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON McGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
December 5, 2012